

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



No. 3 Special Calendar

October Term 1906

# In the Court of Appeals of the District of Columbia.

No. 1674.

FIFTH CONGREGATIONAL CHURCH OF WASHINGTON, D. C.,  
Appellant,

*vs.*

ROBERT S. BRIGHT, Trustee, ET AL.

Filed May 8, 1906.

In the Supreme Court of the District of Columbia.

Court of Appeals of the District of Columbia.

No. 248, Original Docket. April Term, 1906.

Equity. No. 23772.

FIFTH CONGREGATIONAL CHURCH OF WASHINGTON, D. C.,  
Petitioner,

*vs.*

ROBERT S. BRIGHT, Trustee, ET AL.

On consideration of the petition of the Fifth Congregational Church, of Washington, D. C. for the allowance of a special appeal from an order of the Supreme Court of the District of Columbia, entered herein on the 13th day of July, A. D., 1905, imposing upon petitioner half the costs up to that time incurred, it is by the Court now here ordered that said appeal be, and the same is hereby allowed.

SETH SHEPARD,

*Chief Justice.*

CHARLES H. DUELL,

*Associate Justice.*

May 4, 1906.

A True Copy.

Test:

HENRY W. HODGES,

[SEAL.]

*Clerk of the Court of Appeals  
of the District of Columbia.*

No. 248, Original Docket.

FIFTH CONGREGATIONAL CHURCH OF WASHINGTON, D. C.,  
Appellant;

*versus*

ROBERT S. BRIGHT, Trustee, Appellee.

Filed July 13, 1905.

In the Supreme Court of the District of Columbia.

Equity. No. 23772, Doc. 53.

ROBERT S. BRIGHT, Complainant,

*vs.*

OELLA CHAPPEL ET AL., Defendants.

This cause coming on to be heard at this term upon the petition of the Fifth Congregational Church for leave to intervene and being argued by counsel thereupon, upon consideration thereof it is this Fifth Congregational Church shall 13th day of July, 1905, ordered and adjudged that [upon]\* the / pay [ment of]\* one-half the costs of this cause so far incurred and the petition of the said Fifth Congregational Church be granted and it be made a party defendant and the said petition for leave to intervene stand as the intervening petition in this cause.

(Signed)

THOS. H. ANDERSON, *Justice.*

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify that the papers hereto annexed, copies of an order of the Supreme Court of the District of Columbia passed on the 13th day of July, A. D., 1905, and of an order of the Court of Appeals of the District of Columbia passed on the 4th day of May, A. D., 1906, are true and correct copies of papers or orders on file in equity cause No. 23,772, on the equity docket of the Supreme Court of the District of Columbia, as the same remain upon the files and of record in said Court.

And I do hereby further certify that the said Supreme Court of the District of Columbia, sitting in equity, has fixed the penalty of appeal bond to be filed upon the special appeal allowed by the Court of Appeals from said order of July 13, 1905, at One hundred dollars (\$100.00), and that an appeal bond in that penalty has been presented, approved by the Court and filed of record in said cause numbered 23,772 on the equity docket of said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 23d day of May, A. D., 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1674. Fifth Congregational Church of Washington, D. C., appellant, vs. Robert S. Bright, trustee, *et al.* Court of Appeals, District of Columbia. Filed May 23, 1906. Henry W. Hodges, Clerk.

COURT OF APPEALS,  
DISTRICT OF COLUMBIA.  
FILED

OCT 19 1906

*Henry W. Hodges,*  
Court of Appeals, District of Columbia.

OCTOBER TERM, 1906.

No. 1674.

THE FIFTH CONGREGATIONAL CHURCH OF  
WASHINGTON, D. C., APPELLANT,

vs.

ROBERT S. BRIGHT, TRUSTEE.

No. 1671.

THE FIFTH CONGREGATIONAL CHURCH OF  
WASHINGTON, D. C., APPELLANT,

vs.

ROBERT S. BRIGHT, TRUSTEE, ET AL.

BRIEF ON MOTIONS TO DISMISS IN BOTH CASES.

S. HERBERT GIESY,  
*Solicitor for Appellee.*



# Court of Appeals, District of Columbia

OCTOBER TERM, 1906.

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No. 1674.

THE FIFTH CONGREGATIONAL CHURCH OF  
WASHINGTON, D. C., APPELLANT,

*vs.*

ROBERT S. BRIGHT, TRUSTEE.

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No. 1671.

THE FIFTH CONGREGATIONAL CHURCH OF  
WASHINGTON, D. C., APPELLANT,

*vs.*

ROBERT S. BRIGHT, TRUSTEE, ET AL.

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## BRIEF ON MOTIONS TO DISMISS IN BOTH CASES.

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The case below, from which two appeals have been taken, was Robert S. Bright, trustee, *vs.* Bella Chappel *et al.*, in equity, No. 23772. The present appellant was not a party to the case, but Edward Parsons Seymour was (R., 1). The said Seymour filed an answer to the bill on May 15, 1903



(R., 17). On October 1, 1903, Seymour conveyed lot 64, in Bella Chappell's subdivision, in square 911, the subject of the bill of foreclosure filed in the cause, to the appellant (R., 167).

The case was decided May 18, 1905 (R., 170). On May 31, 1905, the appellant filed its petition praying leave to intervene (R., 180).

On July 13, 1905, a decree of foreclosure and sale was signed and also an order permitting the appellant to intervene on the payment of one-half the costs of the cause to date. On the same day the appellant noted an appeal from the decree of foreclosure in open court (R., 182).

On July 31, 1905, the appellant noted an appeal from so much of the order allowing it to intervene as required it to pay one-half the costs (R., 182).

On the 4th of August the appellant filed its petition for leave to sever (R., 183), which leave was granted on August 4, 1905 (R., 184), the petition for the severance stating that all the original defendants to the cause had expressed their intention of taking no appeal (R., 183).

On the 8th of May, 1906, this court allowed a special appeal from the order allowing appellant to intervene in so far as it required it to pay one-half the costs of the cause to date of intervention, which appeal had already been noted on July 31, 1905 (R., 182).

"In the first case the assignee, who is a mere voluntary purchaser, *pendente lite*, cannot defeat the complainant's rights or delay his proceedings by such purchase; for if he could do so, the litigation, by successive assignments, might be rendered interminable. He therefore has no right to be heard, unless he brings himself before the court by a supplemental bill in the nature of a cross-bill; which he may sometimes do to protect his rights as such assignee."

Sedgewick *vs.* Cleveland, 7 Paige Ch., 291.

Segor *et al vs.* Singleton *et al.*, 41 Federal, 725.

*Ex parte* General Assignee *In re* Allen *et al.*, 10 Fed. Cas., 167.

"But upon the whole, as he is thereby a volunteer in the controversy, and intermeddled in the business after the decision of the court in Kinsman's case was known, he in truth stands before the court chargeable in every particular with the liability of Kinsman himself to submit to that decision and cannot justly claim any exemption from its full design and effect."

Parkhurst *vs.* Kinsman *et al.*, 18 Fed. Cas., 1207.

"It is quite clear that the jurisdiction of the court depends upon the state of things at the time of the action brought, and that after vesting it cannot be ousted by subsequent events."

Mollan *et al.* *vs.* Torrance, 9 Wheaton, 537.

"The jurisdiction of the court completely attached to the controversy; having so attached, it could not be diverted by any subsequent events."

Clark *vs.* Mathewson *et al.*, 12 Peters, 171.

Barnard *et al.* *vs.* Hartford P. & F. R. Co., 2 Fed. Cas., 836.

Bank of Commerce *vs.* Timbrell, 113 Iowa, 716.

The appellant seeks to justify its special appeal partly on the ground that there was no decree *pro confesso* against E. Welsh Ashford, and the leave to amend granted at the hearing was therefore not effective against said Ashford. Leave to amend was granted April 18, 1905 (R., 166), and on the 19th of April, 1905, the counsel for appellant, as counsel then for Edward Parsons Seymour, entered into a stipulation that the testimony already taken, and upon which the hearing had been had, should stand as the testimony under the amended bill (R., 167), thereby agreeing to the amendment.

But Ashford was before the court, sections 105, 106, 107, and 108 having been fully complied with (R., 19, 20).

"At an earlier stage, this discretion is controlled by the rules of equity practice adopted by this court,

but not so upon the hearing, for there is no rule on the subject of amendments applicable to a cause which has advanced to this point.

Neale *vs.* Neale, 9th Wal., 1.

Shaw *vs.* Bill, 95 U. S., 1-14.

Respectfully submitted,

S. HERBERT GIESY,  
*Solicitor for Appellee.*

